

Agency for International Development

§ 224.14

answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 224.38.

(h) The defendant may appeal to the A.I.D. Administrator the decision denying a motion to reopen by filing a notice of appeal with the A.I.D. Administrator within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the A.I.D. Administrator decides the issue.

(i) If the defendant files a timely notice of appeal with the A.I.D. Administrator, the ALJ shall forward the record of the proceeding to the A.I.D. Administrator.

(j) The A.I.D. Administrator shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the A.I.D. Administrator decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the A.I.D. Administrator shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the A.I.D. Administrator decides that the defendant's failure to file a timely answer is not excused, the A.I.D. Administrator shall reinstate

the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the A.I.D. Administrator issues such decision.

§ 224.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 224.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 224.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 224.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and A.I.D.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 224.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of A.I.D. who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the A.I.D. Administrator, except as a witness or representative in public proceedings; or